

The Gazette of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, MARCH 22, 1947

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

New Delhi, the 22nd March 1947.

ORDINANCE No. V of 1947.

AN
ORDINANCE

to provide for the continuance of control over issues of capital.

WHEREAS a Bill to provide for the continuance of control over issues of capital has been introduced in the Legislative Assembly but not yet been passed;

AND WHEREAS an emergency has arisen which makes it necessary immediately to provide for the continuance of the said control; 26 Geo. 5, c. 2,

NOW, THEREFORE in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act 1935 the Governor General is pleased to make and promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Capital Issues (Continuance of Control) Ordinance, 1947. Short title extent, commencement and duration.

(2) It extends to the whole of British India, and applies also to British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

(3) It shall come into force on the 25th day of March, 1947, and shall cease to have effect as soon as an Act entitled the Capital Issues (Continuance of Control) Act, 1947, shall have come into operation.

2. In this Ordinance—

Definitions

(a) "issue of capital" means the issuing of any securities whether for cash or otherwise;

(b) "securities" means any of the following instruments issued, or to be issued, by or for the benefit of a company, whether incorporated in British India or not, namely:—

- (i) shares, stocks and bonds;
- (ii) debentures;

(iii) other instruments creating a charge or lien on the assets of the company; and

(iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.

(204A)

Control over
issues of capital

3 (1) No company incorporated in British India shall, except with the consent of the Central Government, make an issue of capital outside British India.

(2) No company, whether incorporated in British India or not, shall except with the consent of the Central Government,—

(a) make an issue of capital in British India ;

(b) make in British India any public offer of securities for sale ;

(c) renew or postpone the date of maturity or repayment of any security maturing for payment in British India.

(3) The Central Government may on application make an order according recognition to an issue of capital made or to be made outside British India by a company not incorporated in British India.

(4) The Central Government may qualify any consent or recognition accorded by it under sub-section (2) or sub-section (3) with such conditions, whether for immediate or future fulfilment, as it may think fit to impose ; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

Control over
prospectuses
and other
advertisements.

4. No person shall issue in British India any prospectus or other document offering for subscription or publicly offering for sale any securities which does not include a statement that the consent or recognition, as the case may be, of the Central Government has been obtained to the issue or offer of the securities, and no person shall without the consent of the Central Government issue in British India any document publicly offering for sale any security issued with the consent or recognition of the Central Government if such issue was made by a private company or if the order according its consent or recognition contained a condition that the securities should be privately subscribed.

Purchase and
sale of securities.

5. (1) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in British India or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May 1943 in British India or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

Power to exempt
and to condone
contraventions.

6. (1) The Central Government may, by general order which shall be notified in the official Gazette, provide for the granting of exemption from all or any of the provisions of sections 3, 4 and 5.

(2) The Central Government may by order condone a contravention of any of the provisions of section 3 or section 4, and on the making of such order the provisions of this Ordinance shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 3 or section 4, as the case may be.

7. Any officer authorised in this behalf by the Central Government may, for the purpose of enquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with, require any company, or any officer of a company, which has made such application or obtained such order to submit to him such accounts, books or other documents, or to furnish to him such information, as he may reasonably think necessary. **Power to call or information**

8. No person shall, when complying with any requisition under section 7 or when making any application for consent or recognition to an issue of capital, give any information or make any statement which he knows, or has reasonable cause to believe, to be false or not true in any material particular. **False statements.**

9. No person who obtains any information by virtue of this Ordinance shall, otherwise than in connection with the execution of the provisions of this Ordinance or of any order made in pursuance thereof disclose that information to any other person except with the permission of the Central Government. **Prohibition against disclosing information.**

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Ordinance is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer subordinate to that Government. **Power to delegate function.**

11. The Central Government may by notification in the official Gazette make rules for carrying out the purposes of this Ordinance. **Power to make rules.**

12. (1) Whoever contravenes, or attempts to contravene, any of the provisions of this Ordinance or of any order made thereunder shall be punishable with imprisonment for a term which may extend to two years or with fine or with both. **Penalties.**

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

13. Where any person is prosecuted for contravening any provision of this Ordinance or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him. **Burden of proof in certain cases.**

14. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Ordinance or any rule or order made thereunder. **Protection of action taken under Ordinance.**

15. (1) All orders made under rule 94A of the Defence of India Rules or under the said rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and in force immediately before the commencement of this Ordinance shall continue to be in force and be deemed to be orders made under the appropriate provisions of this Ordinance. **Continuance of existing orders and savings.**

XX of 1946.

(2) The expiration of rule 94A of the Defence of India Rules of the said rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, shall not affect—

(a) anything done thereunder,

(b) any right, privilege, obligation or liability, acquired or incurred under that rule or any order made thereunder,

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against that rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the said rule had not expired

WAVELL,

Viceroy and Governor-General,

G. H. SPENCE,

Secy. to the Govt. of India.